

State of South Dakota

EIGHTY-FIFTH SESSION LEGISLATIVE ASSEMBLY, 2010

400R0236

HOUSE BILL NO. 1037

Introduced by: The Committee on Commerce at the request of the Department of Revenue
and Regulation

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding insurance producer
2 licensing.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 58-2-29 be amended to read as follows:

5 58-2-29. The director of the Division of Insurance shall collect in advance, and persons so
6 served shall pay to the director in advance, fees, licenses, and miscellaneous charges as follows:

7 (1) Certificate of authority of insurer:

8 (a) Application for original certificate of authority:

9 For filing application for certificate of authority, articles of incorporation, and
10 other charter documents, bylaws, financial statements, examination reports,
11 power of attorney to the director, and all other documents and filings required
12 in connection with such application: \$500.00

13 (b) Issuance of original certificate of authority 25.00

14 (c) Annual renewal of certificate of authority 25.00

15 (d) Reinstatement of certificate of authority 25.00



(e) Amendment or reissuance of certificate of authority 25.00

(f) Annual audit 500.00

This fee to be reduced by the total dollar amount of premium taxes remitted in each calendar year. The fee is waived for all licensed insurers remitting five hundred dollars or more in premium taxes in a calendar year.

(2) Filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation 10.00

(3) Filing bylaws or amendments thereto 5.00

(4) Filing annual statement of insurer, other than as part of application for original certificate of authority 25.00

(5) Insurance producers and solicitors:

(a) Insurance producer's license, including also disability insurance when written by property, casualty, or surety insurer otherwise represented by the insurance producer:

(i) Filing application for original license, and including issuance of license, if issued 25.00

(ii) Original appointment of insurance producer, each insurer 10.00

(iii) Annual renewal of appointment, each insurer:

Domestic insurer 10.00

Foreign insurer 10.00

(iv) Temporary license 10.00

(b) Insurance producer's license, life or health insurance, including both life and disability insurance when so licensed as to the same insurer:

- 1 (i) Application for original license, including issuance of license, if issued,
2 each insurer 25.00
- 3 (ii) Original appointment of insurance producer, each insurer 10.00
- 4 (iii) Annual renewal of appointment, each insurer:
5 Domestic insurer 10.00
6 Foreign insurer 10.00
- 7 (iv) Temporary license 10.00
- 8 (c) Limited license as insurance producer:
9 (i) Motor vehicle physical damage... Same as for insurance producer's
10 license
11 (ii) Accident ticket policies, each insurer each year 10.00
12 (iii) Baggage ticket policies, each insurer each year 10.00
13 (iv) Credit insurance... Same as for insurance producer license
- 14 (d) Examination for license, each examination and each time taken 10.00
- 15 (e) Nonresident insurance producer license:
16 (i) Original license 30.00
17 (ii) ~~Annual~~ Biennial renewal of license ~~25.00~~ 50.00
18 (iii) Appointments, each insurer 20.00
19 (iv) Annual renewal of appointments, each insurer 20.00
- 20 (f) Resident insurance producer, original license 25.00
21 (i) Biennial continuing education fee, license renewal 20.00
- 22 (g) Corporation or partnership license:
23 (i) Original license 25.00
24 (ii) Appointment, each insurer 10.00

- 1 (iii) Annual renewal of appointment, each insurer 10.00
- 2 (h) Nonresident corporation or partnership license:
- 3 (i) Original license 30.00
- 4 (ii) Appointment, each insurer 20.00
- 5 (iii) Annual renewal of appointment, each insurer 20.00
- 6 (6) Insurance vending machine license, each machine, each year 20.00
- 7 (7) Surplus line broker's license, application for original license including issuance of
- 8 license, if issued 50.00
- 9 (a) ~~Annual~~ Biennial renewal of license ~~50.00~~ 100.00
- 10 (8) Rating bureau, original license 25.00
- 11 (a) Annual renewal of license 35.00
- 12 (9) Examination of rating bureau... Same fees as provided in this chapter for examination
- 13 of foreign insurance companies.
- 14 (10) Farm mutuals:
- 15 (a) Application for original certificate of authority: For filing application for
- 16 certificate of authority, articles of incorporation, and all other documents and
- 17 filings required in connection with such application, and for issuance of an
- 18 original certificate of authority, if issued 25.00
- 19 (b) Annual renewal of certificate of authority 10.00
- 20 (c) Filing annual statement 5.00
- 21 (11) Broker's license as attorney in fact of a reciprocal or interinsurance exchange
- 22 20.00
- 23 (12) Miscellaneous services:
- 24 (a) For a copy of any paper filed in the insurance division, for which another price

1 is not set by statute, each page 75

2 (b) Director's sworn certificate, except when on certificates of authority or
3 licenses 10.00

4 (c) For receiving and forwarding copy of summons or other process served upon
5 the director, as process agent of an insurer or nonresident insurance producer
6 10.00

7 (13) Application for continuing education course approval 25.00

8 Section 2. The code counsel shall transfer §§ 58-9-34 to 58-9-45, inclusive, to chapter 58-
9 30.

10 Section 3. That § 58-30-8 be repealed.

11 ~~— 58-30-8. In terminating an insurance producer, corporation, or partnership appointment, the~~
12 ~~insurer shall promptly give written notice of the termination of the appointment, including a~~
13 ~~statement of the facts and causes of the termination and the effective date of the cancellation of~~
14 ~~the insurance producer contract if applicable to the director of the Division of Insurance, and~~
15 ~~to the insurance producer if reasonably possible. The director may require of the insurer~~
16 ~~reasonable proof that the insurer has given the notice to the insurance producer.~~

17 ~~— Any statement made on the prescribed form to the director is privileged information and is~~
18 ~~not admissible in evidence in any action or proceeding, nor may any insurance producer, agency,~~
19 ~~partnership, or corporation whose appointment has been terminated sue the insurer or any of its~~
20 ~~officers, directors, or employees by reason of the furnishing of the information to the director.~~
21 ~~Nothing in this section affects the terms and conditions of any contract between an insurer and~~
22 ~~its insurance producer, including any provisions chosen by the parties dealing with the~~
23 ~~employment of or reasons for termination of insurance producers.~~

24 ~~— Any insurer who fails, neglects, or refuses to promptly supply the information or knowingly~~

1 ~~supplies false information pursuant to this section is guilty of a Class 2 misdemeanor.~~

2 Section 4. That § 58-30-68 be amended to read as follows:

3 58-30-68. The director may issue to an applicant qualified therefor under this title a limited
4 lines insurance producer's license ~~as follows:~~

5 ~~— (1) — To transportation ticket-selling agents of common carriers, covering personal~~
6 ~~accident insurance under ticket policies;~~

7 ~~— (2) — To transportation ticket-selling agents of common carriers, covering baggage~~
8 ~~insurance;~~

9 ~~— (3) — Travel accident insurance producers of motor service clubs for the following types~~
10 ~~of insurance:~~

11 (1) Credit insurance as defined in § 58-30-142;

12 (2) Crop insurance as defined in § 58-30-142;

13 (3) Rental car insurance as defined in § 58-9-35; and

14 (4) Travel insurance as defined in § 58-30-142.

15 Section 5. That § 58-30-74 be amended to read as follows:

16 58-30-74. ~~All licenses and appointments~~ Each license or appointment issued under this title
17 shall continue in force until expired, suspended, revoked, or otherwise terminated, whichever
18 is applicable, but ~~are~~ is subject to renewal by payment to the director annually or biennially of
19 the applicable fee as stated in § 58-2-29 upon notice by the director. ~~Any request for renewal~~
20 ~~of a surplus line broker license shall be made by the licensee.~~

21 Section 6. That § 58-30-100 be repealed.

22 ~~— 58-30-100. In addition to the qualifications and requirements therefor referred to in §§ 58-~~
23 ~~30-95 to 58-30-99, inclusive, the issuance of a nonresident insurance producer's license is~~
24 ~~subject to the conditions set forth in §§ 58-30-101 and 58-30-104.~~

Section 7. That § 58-30-104 be repealed.

~~58-30-104. All policies covering South Dakota risks placed by a licensee as nonresident insurance producer are subject to the countersignature law.~~

Section 8. That § 58-30-114 be amended to read as follows:

58-30-114. Terms, as used in §§ 58-30-114 to 58-30-121, inclusive, mean:

- (1) "Director," the director of the Division of Insurance;
- (2) "Instructor," any individual who teaches, lectures, or otherwise instructs an insurance education offering;
- (3) "Licensee," any individual who is licensed by the Division of Insurance as a resident insurance producer; and
- (4) "Sponsor," any person, offering or providing insurance education or related activity; and
- ~~(5) "Two-year period," twenty-four months commencing on April 1, 1986, and each succeeding twenty-four month period. The twenty-four month period ending on March 31, 2000, is extended through April 30, 2000. Each succeeding twenty-four month period thereafter shall commence on May first.~~

Section 9. That § 58-30-115 be amended to read as follows:

58-30-115. The provisions of §§ 58-30-114 to 58-30-121, inclusive, do not apply to the following persons:

- (1) Licensees for whom an examination is not required under the laws of this state. However, persons who are excused from the examination under subdivisions 58-30-52(1), (2), and (3) may not be exempt;
- ~~(2) Persons excepted from licensing requirements as defined in §§ 58-30-5 and 58-30-5.1;~~

1 ~~—(3)—~~ Licensees over age sixty-five, if they have been licensed with the Division of
2 Insurance for a period of at least ten years, and do not sell, solicit, or negotiate
3 insurance; and

4 ~~(4)(3)~~ Licensees holding limited or restricted licenses, as the director of the Division of
5 Insurance may determine except as provided by subdivision 58-30-116(2).

6 Section 10. That § 58-30-116 be amended to read as follows:

7 58-30-116. ~~In each two-year period, each~~ Biennially, beginning April 1, 2012, on the last
8 day of the licensee's birth month, the licensee shall furnish evidence to the director of the
9 Division of Insurance that the licensee has satisfactorily completed the following continuing
10 education requirements:

11 (1) Any licensee who holds a property casualty life, accident/health, or variable contract
12 qualification shall obtain a minimum of ten continuing education credit hours in
13 courses certified for each such classification. However, no more than twenty hours
14 of continuing education may be required of any licensee holding multiple insurance
15 producer licenses; and

16 (2) Any licensee who holds only a crop hail qualification shall obtain a minimum of four
17 credit hours certified for that line.

18 Section 11. That § 58-30-121 be amended to read as follows:

19 58-30-121. The Division of Insurance shall charge each licensee an additional fee of twenty
20 dollars upon renewal of the license. ~~The fee is due on May 1, 2004, and at the beginning of each~~
21 ~~succeeding twenty-four-month period. Beginning in 2008 and each succeeding twenty-four~~
22 ~~month period, the fee is due on April thirtieth. Beginning April 1, 2012, the fee as defined in~~
23 § 58-2-29 is due on the last day of the licensee's birth month and for each succeeding twenty-
24 four month period. The fee shall be deposited in a separate account, entitled the South Dakota

1 insurance producer's continuing education fund, as funding for the administration of the
2 continuing education program. The director may withhold or not renew the license of any
3 licensee who fails to tender timely payment of the fee.

4 Section 12. That § 58-30-142 be amended to read as follows:

5 58-30-142. Terms used in §§ 58-30-141 to 58-30-195, inclusive, mean:

- 6 (1) "Agent of the insurer," any insurance producer who is compensated directly or
7 indirectly by an insurer and sells, solicits, or negotiates any product of that insurer;
- 8 (2) "Agent of insured," any insurance producer or person who secures compensation
9 from an insured or insurance customer only and receives no compensation directly
10 or indirectly from an insurer for a transaction with that insured or insurance
11 customer;
- 12 (3) "Business entity," a corporation, association, partnership, limited liability company,
13 limited liability partnership, or other legal entity;
- 14 (4) "Credit insurance," insurance that includes credit life, credit disability, credit
15 property, credit unemployment, involuntary unemployment, mortgage life, mortgage
16 guaranty, mortgage disability, guaranteed automobile protection insurance, and any
17 other form of insurance offered in connection with an extension of credit that is
18 limited to partially or wholly extinguishing that credit obligation that the director
19 determines should be designated a form of limited line credit insurance;
- 20 (5) "Crop insurance," insurance providing protection against damage to crops from
21 unfavorable weather conditions, fire or lightening, flood, hail, insect infestation,
22 disease or other yield-reducing conditions or perils provided by the private insurance
23 market, or that is subsidized by the Federal Crop Insurance Corporation, including
24 Multi-Peril Crop Insurance;

1 (6) "Home state," the District of Columbia and any state or territory of the United States
2 in which an insurance producer maintains the insurance producer's principal place of
3 residence or principal place of business and is licensed to act as an insurance
4 producer;

5 ~~—(5)—~~ "Limited line credit insurance," ~~includes credit life, credit disability, credit property,~~
6 ~~credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty,~~
7 ~~mortgage disability, guaranteed automobile protection insurance, and any other form~~
8 ~~of insurance offered in connection with an extension of credit that is limited to~~
9 ~~partially or wholly extinguishing that credit obligation that the insurance director~~
10 ~~determines should be designated a form of limited line credit insurance;~~

11 ~~—(6)—~~ "Limited line credit insurance producer," ~~any person who sells, solicits, or negotiates~~
12 ~~one or more forms of limited line credit insurance coverage to individuals through~~
13 ~~a master, corporate, group, or individual policy;~~

14 ~~—(7)—~~ "Limited lines insurance," ~~those lines of insurance defined in § 58-30-68 or any other~~
15 ~~line of insurance that the insurance director may deem it necessary to recognize for~~
16 ~~the purposes of complying with § 58-30-163;~~

17 ~~(8)~~(7) "Limited lines producer," any person authorized by the insurance director to sell,
18 solicit, or negotiate limited lines insurance;

19 ~~(9)~~(8) "Negotiate," the act of conferring directly with or offering advice directly to a
20 purchaser or prospective purchaser of a particular contract of insurance concerning
21 any of the substantive benefits, terms, or conditions of the contract if the person
22 engaged in that act either sells insurance or obtains insurance from insurers for
23 purchasers;

24 ~~(10)~~(9) "Sell," to exchange a contract of insurance by any means, for money or its

1 equivalent, on behalf of an insurance company;

2 ~~(11)~~(10) "Solicit," attempting to sell insurance or asking or urging a person to apply for
3 a particular kind of insurance from a particular company;

4 ~~(12)~~(11) "Terminate," the cancellation of the relationship between an insurance
5 producer and the insurer or the termination of an insurance producer's
6 authority to transact insurance;

7 (12) "Travel insurance," insurance coverage for trip cancellation, trip interruption,
8 baggage, life, sickness and accident, disability, and personal effects when limited to
9 a specific trip and sold in connection with transportation provided by a common
10 carrier.

11 Section 13. That § 58-30-144 be amended to read as follows:

12 58-30-144. Nothing in §§ 58-30-141 to 58-30-195, inclusive, requires an insurer to obtain
13 an insurance producer license. In this section, the term, insurer, does not include an insurer's
14 officers, directors, employees, subsidiaries, or affiliates.

15 A license as an insurance producer is not required of the following:

16 (1) The officer, director, or employee of an insurer or of an insurance producer, if the
17 officer, director, or employee does not receive any commission on policies written
18 or sold to insure risks residing, located, or to be performed in this state and:

19 (a) The officer's, director's, or employee's activities are executive, administrative,
20 managerial, clerical, or a combination of these, and are only indirectly related
21 to the sale, solicitation, or negotiation of insurance;

22 (b) The officer's, director's, or employee's function relates to underwriting, loss
23 control, inspection or the processing, adjusting, investigating, or settling of a
24 claim on a contract of insurance; or

- 1 (c) The officer, director, or employee is acting in the capacity of a special agent
2 or agency supervisor assisting insurance producers, if the person's activities
3 are limited to providing technical advice and assistance to licensed insurance
4 producers and do not include the sale, solicitation, or negotiation of insurance;
- 5 (2) Any person who secures and furnishes information for the purpose of group life
6 insurance, group property and casualty insurance, group annuities, group or blanket
7 accident and health insurance; or for the purpose of enrolling individuals under plans,
8 issuing certificates under plans, or otherwise assisting in administering plans; or who
9 performs administrative services related to mass marketed property and casualty
10 insurance, if no commission is paid to the person for the service;
- 11 (3) Any employer or association or its officers, directors, employees, or the trustees of
12 an employee trust plan, to the extent that the employers, officers, employees, director,
13 or trustees are engaged in the administration or operation of a program of employee
14 benefits for the employer's or association's own employees or the employees of its
15 subsidiaries or affiliates, which program involves the use of insurance issued by an
16 insurer, as long as the employers, associations, officers, directors, employees, or
17 trustees are not in any manner compensated, directly or indirectly, by the company
18 issuing the contracts;
- 19 (4) Any employee of an insurer or an organization employed by an insurer who is
20 engaging in the inspection, rating, or classification of risks, or in the supervision of
21 the training of insurance producers and who is not individually engaged in the sale,
22 solicitation, or negotiation of insurance;
- 23 (5) Any person whose activities in this state are limited to advertising without the intent
24 to solicit insurance in this state through communications in printed publications or

1 other forms of electronic mass media whose distribution is not limited to residents
2 of the state, if the person does not sell, solicit, or negotiate insurance that would
3 insure risks residing, located, or to be performed in this state;

4 (6) Any person who is not a resident of this state who sells, solicits, or negotiates a
5 contract of insurance for commercial property and casualty risks to an insured with
6 risks located in more than one state insured under that contract, if that person is
7 otherwise licensed as an insurance producer to sell, solicit, or negotiate that insurance
8 in the state where the insured maintains its principal place of business and the
9 contract of insurance insures risks located in that state, ~~except that any contract of~~
10 ~~insurance applicable to this subdivision shall be countersigned by a licensed resident~~
11 ~~insurance producer appointed by the insurer as required by § 58-6-62;~~

12 (7) Any salaried full-time employee who counsels or advises his or her employer relative
13 to the insurance interests of the employer or of the subsidiaries or business affiliates
14 of the employer, if the employee does not sell or solicit insurance or receive a
15 commission;

16 (8) Any person engaged in the business of fur storage who delivers to customers
17 certificates or policies providing insurance on specified furs, garments trimmed with
18 fur, or other garments accepted for storage and who collects the premium therefor,
19 if the person receives no commissions for such service; or

20 (9) Any person engaged in the sale or issuance by motor vehicle dealers licensed under
21 chapter 32-6B of motor vehicle service contracts, extended service agreements,
22 mechanical breakdown insurance, or insurance of the mechanical condition, or
23 freedom from defective or worn parts or equipment of motor vehicles.

24 Section 14. That § 58-30-152 be amended to read as follows:

58-30-152. Unless denied licensure pursuant to § 58-30-167, any person who has met the requirements of §§ 58-30-145 to 58-30-151, inclusive, shall be issued an insurance producer license. An insurance producer may receive qualification for a license in one or more of the following lines of authority:

(1) Life--insurance coverage on human lives including benefits of endowment and annuities and may include benefits in the event of death or dismemberment by accident and benefits for disability income;

(2) Accident and health or sickness--insurance coverage for sickness, bodily injury, or accidental death and may include benefits in the event of death or dismemberment by accident and for disability income;

(3) Property--insurance coverage for the direct or consequential loss or damage to property of every kind;

(4) Casualty--insurance coverage against legal liability, including that for death, injury, or disability, damage to real or personal property, or fidelity and surety bonds;

(5) Variable life and variable annuity products--insurance coverage provided under variable life insurance contracts and variable annuities;

~~(6) Commercial lines--property and casualty insurance coverage sold to businesses including farming, professionals, and other commercial enterprises;~~

~~—(7)—~~Personal lines--property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

~~—(8)—~~Credit--limited line credit insurance;

(7) Limited lines;

~~(9)~~(8) Any other line of insurance permitted under state laws or rules.

Section 15. That § 58-30-163 be amended to read as follows:

1 58-30-163. ~~Notwithstanding any other provision of §§ 58-30-141 to 58-30-195, inclusive,~~
2 ~~a person licensed as a limited line credit insurance producer or other type of limited lines~~
3 ~~insurance producer in the person's home state is entitled to receive a nonresident limited lines~~
4 ~~insurance producer license if eligible pursuant to § 58-30-159 granting the same scope of~~
5 ~~authority as granted under the license issued by the insurance producer's home state. For the~~
6 ~~purposes of this section, limited line insurance is any authority granted by the home state which~~
7 ~~restricts the authority of the license to less than the total authority prescribed in the associated~~
8 ~~major lines pursuant to subdivisions 58-30-152(1) to (7), inclusive. The director shall waive any~~
9 ~~requirements for a nonresident license applicant with a valid license from the applicant's home~~
10 ~~state, except for the requirements imposed by § 58-30-159, if the applicant's home state awards~~
11 ~~nonresident licenses to residents of this state on the same basis.~~ The director may issue a
12 resident license for a type of license not specified in this title to a person for insurance activities
13 which do not require licensure in this state provided that another state which that person does
14 insurance business in requires such license.

15 Section 16. That § 58-30-180 be amended to read as follows:

16 58-30-180. An insurer or authorized representative of the insurer that terminates the
17 appointment, employment, contract, or other insurance business relationship with an insurance
18 producer shall notify the director within thirty days following the effective date of the
19 termination, using a format prescribed by the director. In addition, an insurer or authorized
20 representative of the insurer that terminates the appointment, employment, contract, or other
21 insurance business relationship with a producer shall notify the director within thirty days
22 following the effective date of the termination, using a format prescribed by the director, if a
23 reason for termination is one of the reasons set forth in § 58-30-167 or the insurer has
24 knowledge the producer was found by a court, government body, or self-regulatory organization

1 authorized by law to have engaged in any of the activities in § 58-30-167. Upon the written
2 request of the director, the insurer shall provide additional information, documents, records, or
3 other data pertaining to the termination or activity of the insurance producer pursuant to § 58-
4 30-8, ~~such~~. Such information is, documents, records, or other data are confidential pursuant to
5 § 58-30-187.